IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 12632 of 2007(D)

PETITIONER:

T.M.HASSAN PILLAI, AGED 66,
S/O.T.M.MEERANNAN RAWTHER,
PRESIDENT OF THE KERALA STATE CONSUMER
DISPUTES REDRESSAL COMMISSION, THIRUVANANTHAPURAM.

BY ADV. SRI.P.S.DIVAKARAN
SMT.PREETHI K.PURUSHOTHAMAN

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
FOOD AND CIVIL SUPPLIES DEPARTMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF CIVIL SUPPLIES,
PUBLIC OFFICE BUILDING
MUSEUM P.O., THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.BENJAMIN PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON 30/10/2007 DELIVERED THE FOLLOWING:

WPC NO.12632/07

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: A COPY OF THE D.O.LETTER SENT BY THE PETITIONER TO THE SPECIAL SECRETARY.

EXT.P2: A COPY OF THE LETTER DT.5.10.2006.

EXT.P3: A COPY OF THE LETTER ADDRESSED TOT HE LAW SECRETARY.

EXT.P4: A COPY OF THE LETTER DATED 10.11.2006 ADDRESSED to the SECRETARY TO THE GOVERNMENT FOR CIVIL SUPPLIES DEPARTMENT.

EXT.P5: A COPY OF THE LETTER DT.18.12.2006

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO. 12632 OF 2007 D
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Dated this the 30th day of October, 2007

J U D G M E N T

The petitioner, a retired judge of this court was appointed as the President of the Kerala State Consumer Disputes Redressal Commission on 2/11/02. The rule prevailing at the time of his appointment was the Kerala Consumer Protection Rules 1998 and in terms of Rule 6, the President of the State Commission shall be entitled to salary, allowances and other perquisites as admissible to a sitting Judge of the High Court, if appointed on whole time basis.

2. This writ petition concerns the claim of the petitioner for the benefit of LTC, which was granted to him till 2005. In 2006, in accordance with the practice prevailing, petitioner addressed Ext.P1 letter to the 1st respondent requesting for allotment of funds for his proposed visit on LTC. There was no response and subsequent requests evidenced by Exts. P2 to P4 were also made. It is stated that the 1st respondent thereafter

sought for details of the LTC availed of by the petitioner since his appointment, and that was also furnished by the Secretary of the State Commission under Ext.P5 communication. Even thereafter, since response to his request was not forthcoming, petitioner filed this writ petition praying for directing the respondents to allot funds in pursuance to Exts. P1 and P2.

3. On behalf of the 1st respondent, a counter affidavit has been filed in which, it is stated that at the time of the appointment of the petitioner, the rule prevailing was Kerala Consumer Protection Rules 1998. It is stated that subsequently the 1st respondent promulgated the Kerala Consumer Protection Rules 2005 in December 2005, in supersession of the 1998 rules, and that the 2005 rules came into force in December 2005.

4. As per Rule 26(1) of the 2005 rules, the President of the State Commission shall be entitled to salary and allowances as are admissible to a sitting Judge of the High Court, if appointed on whole time basis. It is stated that in the new rules, there is no specific mention of perquisites. The President was appointed in terms of the 1998 rules and that the benefit of

perquisites has been omitted when the 2005 rules were promulgated.

5. When the matter was heard, though the learned counsel for the writ petitioner accepts the position that in terms of the 2005 rules, the petitioner is not eligible for the benefit of LTC, the contention raised before me was that since he was appointed prior to the promulgation of 2005 rules, his conditions of service are to be regulated in terms of the 1998 rules, until his tenure was over. Therefore, it is argued that irrespective of the changes introduced as per 2005 rules, the petitioner is entitled to enjoy the benefit of LTC, on a par with the entitlement of a sitting Judge of the High Court.

6. I am not in a position to accept this contention. The petitioner asserts his entitlement to be governed by the provisions of the 1998 rules, irrespective of the fact that the same has been superseded by the 2005 rules. The petitioner is not relying on any order or condition accepted by the 1st respondent that during his tenure, he will continue to be governed by the 1998 rules irrespective of whether rule has been

superseded.

7. If that be so, the changes that 1st respondent has implemented in the conditions of service that are applicable to the President of the Commission, by virtue of the 2005 rules are equally applicable to the petitioner. At any rate, the entitlement of the petitioner to claim the benefit of LTC has to be determined in terms of the Rule that is prevailing at the time when the claim is raised. Since the claim was raised in 2006 when the 2005 rules came into force, his entitlement will depend upon the terms of those rules.

Even otherwise the petitioner cannot plead any estopel against the respondent. If that be so, petitioner's entitlement has to be determined only in terms of the 2005 rules. Since it is the accepted position that the 2005 rule does not provide for LTC for the President of the State Commission, the claim of the petitioner is unsustainable. If that be so, the writ petition is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp